

SCHOOL CONSTRUCTION PROJECTS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melissa G. Ballard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends requirements for a local education agency (LEA) related to school construction.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an LEA to appoint an employee of the LEA or a contracted person to oversee a school construction project;
- ▶ provides requirements for a person who oversees a school construction project;
- ▶ requires an LEA to receive at least three proposals for an architect and three bids for a contractor for a school construction project;
- ▶ prohibits an LEA from issuing a single contract for design services and contractor services for a school construction project;
- ▶ requires the State Board of Education to make rules; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **53E-3-702**, as renumbered and amended by Laws of Utah 2018, Chapter 1

30 **53E-3-703**, as renumbered and amended by Laws of Utah 2018, Chapter 1

31 **53E-3-707**, as renumbered and amended by Laws of Utah 2018, Chapter 1

32 **53E-3-708**, as renumbered and amended by Laws of Utah 2018, Chapter 1



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **53E-3-702** is amended to read:

36 **53E-3-702. Board to adopt public school construction guidelines.**

37 (1) As used in this section:

38 (a) "Board" means the State Board of Education.

39 (b) "Public school construction" means construction work on a new public school.

40 (2) (a) The board shall:

41 (i) adopt guidelines for public school construction; and

42 (ii) consult with the Division of Facilities Construction and Management

43 Administration on proposed guidelines before adoption.

44 (b) The board shall ensure that guidelines adopted under Subsection (2)(a)(i) maximize
45 funds used for public school construction and reflect efficient and economic use of those funds,
46 including adopting guidelines that address a school's essential needs rather than encouraging or
47 endorsing excessive costs per square foot of construction or nonessential facilities, design, or
48 furnishings.

49 (3) Before a school district or charter school may begin public school construction, the
50 school district or charter school shall:

51 (a) review the guidelines adopted by the board under this section; and

52 (b) take into consideration the guidelines when planning the public school
53 construction.

54 (4) In adopting the guidelines for public school construction, the board shall consider
55 the following and adopt alternative guidelines as needed:

56 (a) location factors, including whether the school is in a rural or urban setting, and
57 climate factors;

58 (b) variations in guidelines for significant or minimal projected student population

59 growth;

60 (c) guidelines specific to schools that serve various populations and grades, including
61 high schools, junior high schools, middle schools, elementary schools, alternative schools, and
62 schools for people with disabilities; and

63 (d) year-round use.

64 (5) The guidelines shall address the following:

65 (a) square footage per student;

66 (b) minimum and maximum required real property for a public school;

67 (c) athletic facilities and fields, playgrounds, and hard surface play areas;

68 (d) cost per square foot;

69 (e) minimum and maximum qualities and costs for building materials;

70 (f) design efficiency;

71 (g) parking;

72 (h) furnishing;

73 (i) proof of compliance with applicable building codes; and

74 (j) safety.

75 (6) The state board shall establish in rule an amount of money for a building project
76 cost threshold that applies to the requirements described in Section [53E-3-703](#).

77 Section 2. Section **53E-3-703** is amended to read:

78 **53E-3-703. Construction and alteration of schools and plants -- Advertising for**
79 **bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local**
80 **school boards -- Interest of local school board members.**

81 (1) (a) As used in this section, "cost threshold" means the amount of money established
82 by the state board in rule under Subsection [53E-3-702\(6\)](#).

83 (b) As used in this section, the word "sealed" does not preclude acceptance of
84 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
85 sealed and submitted.

86 (2) (a) Prior to the construction of any school or the alteration of any existing school
87 plant, if the total estimated accumulative building project cost exceeds [~~\$80,000~~] the cost
88 threshold, a local school board shall advertise for bids on the project at least 10 days before the
89 bid due date.

- 90 (b) The advertisement shall state:
- 91 (i) that proposals for the building project are required to be sealed in accordance with
- 92 plans and specifications provided by the local school board;
- 93 (ii) where and when the proposals will be opened;
- 94 (iii) that the local school board reserves the right to reject any and all proposals; and
- 95 (iv) that a person that submits a proposal is required to submit a certified check or bid
- 96 bond, of not less than 5% of the bid in the proposal, to accompany the proposal.
- 97 (c) The local school board shall publish the advertisement, at a minimum:
- 98 (i) on the local school board's website; or
- 99 (ii) on a state website that is:
- 100 (A) owned or managed by, or provided under contract with, the Division of Purchasing
- 101 and General Services; and
- 102 (B) available for the posting of public procurement notices.
- 103 (3) (a) The local school board shall meet at the time and place specified in the
- 104 advertisement and publicly open and read all received proposals.
- 105 (b) [~~H~~] Subject to Subsection (9), if satisfactory bids are received, the local school
- 106 board shall award the contract to the lowest responsive and responsible bidder.
- 107 (c) If none of the proposals are satisfactory, all shall be rejected.
- 108 (d) The local school board [~~shall~~] may again advertise in the manner provided in this
- 109 section.
- 110 (e) If, after advertising a second time no satisfactory bid is received or fewer than three
- 111 bids are received, the local school board may:
- 112 (i) if no satisfactory bid is received, proceed under [~~its~~] the local school board's own
- 113 direction with the required project[~~];~~ or
- 114 (ii) if fewer than three bids are received, select one of the bids received.
- 115 (4) (a) The check or bond required under Subsection (2)(b) shall be drawn in favor of
- 116 the local school board.
- 117 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
- 118 additional bonds required under this section, then the bidder's check or bond is forfeited to the
- 119 district.
- 120 (5) A local school board shall require payment and performance bonds of the

121 successful bidder as required in Section [63G-6a-1103](#).

122 (6) (a) A local school board may require in the proposed contract that up to 5% of the
123 contract price be withheld until the project is completed and accepted by the board.

124 (b) If money is withheld, the local school board shall place it in an interest bearing
125 account, and the interest accrues for the benefit of the contractor and subcontractors.

126 (c) This money shall be paid upon completion of the project and acceptance by the
127 local school board.

128 (7) (a) ~~[A]~~ Except as provided in Subsection (7)(b), a local school board may not [bid]
129 use the local school board's resources on projects within the district if the total accumulative
130 estimated cost exceeds ~~[\$80,000]~~ the cost threshold.

131 (b) The local school board may use ~~[its]~~ the local school board's resources if no
132 satisfactory bids are received under this section.

133 (8) ~~[If the]~~ Subject to Subsection (9), if a local school board determines in accordance
134 with Section [63G-6a-1302](#) to use a construction manager/general contractor as [its] the local
135 school board's method of construction contracting management on projects where the total
136 estimated accumulative cost exceeds ~~[\$80,000, it]~~ the cost threshold, the local school board
137 shall select the construction manager/general contractor in accordance with the requirements of
138 Title 63G, Chapter 6a, Utah Procurement Code.

139 (9) If a local school board receives fewer than three proposals for an architect or fewer
140 than three bids for a general contractor for a school building project, the local school board
141 may reissue the advertisement.

142 ~~[(9)]~~ (10) A local school board member may not have a direct or indirect financial
143 interest in the construction project contract.

144 Section 3. Section **53E-3-707** is amended to read:

145 **53E-3-707. School building construction and inspection manual -- Annual**
146 **construction and inspection conference -- Verification of school construction inspections**
147 **-- LEA to appoint responsible person.**

148 (1) As used in this section, "local education agency" or "LEA" means:

149 (a) a school district; or

150 (b) a charter school.

151 ~~[(1)]~~ (2) (a) The State Board of Education, through the state superintendent of public

152 instruction, shall develop and distribute to each school district a school building construction
153 and inspection resource manual.

154 (b) The manual shall be provided to a charter school upon request of the charter school.

155 ~~[(2)]~~ (3) (a) The manual shall include:

156 (i) current legal requirements; and

157 (ii) information on school building construction and inspections, including the
158 guidelines adopted by the State Board of Education in accordance with Section 53E-3-702.

159 (b) The state superintendent shall review and update the manual at least once every
160 three years.

161 ~~[(3)]~~ (4) The board shall provide for an annual school construction conference to allow
162 a representative from each ~~[school district and charter school]~~ LEA to:

163 (a) receive current information on the design, construction, and inspection of school
164 buildings;

165 (b) receive training on such matters as:

166 (i) using properly certified building inspectors;

167 (ii) filing construction inspection summary reports and the final inspection certification
168 with the local governmental authority's building official;

169 (iii) the roles and relationships between ~~[a school district or charter school]~~ an LEA
170 and the local governmental authority, either a county or municipality, as related to the
171 construction and inspection of school buildings; and

172 (iv) adequate documentation of school building inspections; and

173 (c) provide input on any changes that may be needed to improve the existing school
174 building inspection program.

175 ~~[(4)]~~ (5) The board shall develop a process to verify that inspections by qualified
176 inspectors occur in each ~~[school district or charter school]~~ LEA.

177 (6) An LEA shall:

178 (a) appoint a person to have direct administrative and operational control of all
179 construction, renovation, and inspection of public school facilities within the LEA; and

180 (b) ensure that the person appointed under Subsection (6)(a) has:

181 (i) knowledge of building construction and repair, safety precautions, building trades,
182 contracting procedures, and laws pertaining to construction; and

183 (ii) the ability to oversee building construction projects, read and interpret blueprints,
184 maintain standards of quality, and evaluate construction or design problems and suggest
185 solutions.

186 (7) To fulfill the requirements described in Subsection (6), an LEA may:

187 (a) appoint an employee of the LEA; or

188 (b) in accordance with Title 63G, Chapter 6a, Utah Procurement Code, contract with a
189 person who is not an employee of the LEA.

190 Section 4. Section 53E-3-708 is amended to read:

191 **53E-3-708. Licensed architect to prepare plans -- Contracts for architect to be**
192 **procured separately -- Prohibition on design-build contracts -- Payment for architecture**
193 **services.**

194 (1) As used in this section, "design-build" means the same as that term is defined in
195 Section [63G-6a-103](#).

196 (2) A licensed architect shall prepare the plans and specifications for the construction
197 or alteration of school buildings.

198 (3) (a) A local school board shall procure architecture services for a school
199 construction project separately from procuring general contracting or other construction
200 services.

201 (b) A local school board may not issue a design-build contract for a school construction
202 project.